

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.41750 of 2018

Arising Out of PS. Case No.-203 Year-2015 Thana- PATNA COMPLAINT CASE District- Patna

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Arun Kumar @ Upkar Pritam Kumar Santoshi, S/o Late Lala Prasad Singh, R/o Vill.- Sadarpur, P.S.- Bind, District- Nalanda, presently residing at Rani Niwas, Ramesh Colony, Dariyapur, P.S.- Parsa Bazar, District- Patna.

... .. Petitioner/s

Versus

1. State of Bihar
2. Kaushlendra Prasad, S/o Gokhul Mahto, Permanent resident of Vill.- Merrachak, P.S. - Bind, District- Nalanda at Resident of Adarsh Colony Block-B, Bariyarahata, Postal Park, P.S.- Kankarbagh, District- Patna.

... .. Opposite Party/s

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Acts/Sections/Rules:

- Sections 323, 406, 420, 504

Petition - filed to quash the order whereby an application filed for modification in the cognizance order was allowed.

Magistrate, after examining the complainant and his witnesses during the course of enquiry, took cognizance of the offences punishable under sections 323 and 504 of the IPC against the petitioner. Complainant filed a petition the concerned Magistrate with a prayer to add sections 420 and 406 of the IPC in the cognizance order and thereby made a prayer to modify the cognizance order and upon that, the concerned Judicial Magistrate modified his own order.

Held - Court which has taken cognizance of an offence has no power to review its own cognizance order. (Para 5)

First cognizance order shall remain in force and the concerned Magistrate shall proceed ahead in the light of his first cognizance order. (Para 6)

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Appearance :

For the Petitioner/s : Mr. Vijay Anand, Adv.
Mr. Roop Kishan, Adv.
For the State : Mr. Suresh Pd. Singh, APP
For the O.P. No. 2 : Mr. Puneet Siddhartha, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

6 28-01-2025 Heard Mr. Vijay Anand, learned counsel appearing for the petitioner, Mr. Suresh Pd. Singh, learned APP appearing for the State and Mr. Puneet Siddhartha, learned counsel appearing for the O.P. No. 2.

2. The instant petition has been filed under section 482 of the Code of Criminal Procedure (in short ‘Cr.P.C.’) with a prayer to quash the order dated 16.06.2017 passed by the court of learned Judicial Magistrate, 1st class, Patna, in connection with Complaint Case No. 203(C) of 2015, whereby an application filed by the O.P. No. 2 for modification in the



cognizance order was allowed.

3. Learned counsel appearing for the petitioner submits that the complainant/O.P. No. 2 filed a complaint with the main allegation of non-payment of loan amount as well as other allegations and on that basis, the learned Magistrate, after examining the complainant and his witnesses during the course of enquiry, took cognizance of the offences punishable under sections 323 and 504 of the IPC against the petitioner and he was summoned for the said offences. Thereafter, the complainant (O.P. No. 2) being aggrieved with the said cognizance order preferred a Criminal Rev. No. 406 of 2015 challenging the cognizance order on the ground that the cognizance of the other alleged offences, which are completely made out, was not taken by the learned Magistrate and in that criminal revision, the revisional court disposed of the revision application with giving a liberty to the O.P. No. 2 to raise his grievances before the concerned trial court at the stage of framing of charge (Annexure -4). Thereafter, the O.P. No. 2 filed a petition (Annexure -5) before the concerned Magistrate with a prayer to add sections 420 and 406 of the IPC in the cognizance order and thereby made a prayer to modify the cognizance order and upon that, the concerned Judicial Magistrate modified his



own order by passing the impugned order which is completely impermissible in the eyes of law as between the period when the first cognizance order was passed and when the impugned cognizance order was passed, the circumstances relating to the petitioner's case did not change, so, the impugned order amounts to review of the cognizance order by the Judicial Magistrate himself which is against the law.

4. Learned counsel appearing for the O.P. No. 2 has opposed this petition and submitted that the alleged offences of sections 406 and 420 of the IPC are made out against the petitioner as he had an intention to cheat the O.P. No. 2 from the date of the execution of the alleged agreement dated 04.03.2013 and there is no illegality in the impugned order.

5. Heard both the sides and perused the order impugned. This Court finds substance in the aforesaid ground taken by the petitioner as a court which has taken cognizance of an offence has no power to review its own cognizance order and further, in the light of the revisional court's order dated 01.07.2015 passed in Cr. Rev. No. 406 of 2015, the O.P. No. 2 was given a liberty to raise his grievance at the time of framing of charge but instead of availing that liberty, the O.P. No. 2 filed an application (Annexure -5) for the modification in the



cognizance order which was not proper and the learned Magistrate also misunderstood the spirit of the revisional court’s order and proceeded to review its own cognizance order, as such, the order impugned is hereby set aside and the instant petition is allowed.

6. It is clarified that the first cognizance order dated 29.05.2015 shall remain in force and the concerned Magistrate shall proceed ahead in the light of his first cognizance order and the O.P. No. 2 will have the same liberty granted by the revisional court in its order dated 01.07.2015.

(Shailendra Singh, J)

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